

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

GUILFORD COLLEGE, *et al.*,

*Plaintiffs,*

v.

KIRSTJEN NIELSEN, *et al.*,

*Defendants.*

Civil Action No. 18-cv-891

**PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION  
AND PARTIAL SUMMARY JUDGMENT**

**RELIEF RESPECTFULLY REQUESTED ON OR BEFORE FEBRUARY 4, 2019**

Pursuant to Federal Rules of Civil Procedure 56 and 65 and Local Civil Rules 56.1 and 65.1, Plaintiffs Guilford College, Guilford College International Club, The New School, Foothill De-Anza Community College District, Haverford College, The American Federation of Teachers, Jia Ye, and Sen Li respectfully move this Court for a preliminary injunction suspending the effectiveness, pending resolution of this lawsuit, of the memorandum entitled *Accrual of Unlawful Presence and F, J, and M Nonimmigrants*, issued by Defendant United States Citizenship and Immigration Services (USCIS) on August 9, 2018 and bearing the file number PM-602-1060.1 (the August 2018 Memorandum); and of the memorandum with the same title issued on May 10, 2018 and bearing the file number PM-602-1060. Plaintiffs also move, additionally, for summary judgment on the two claims described below.

As set out more fully in their memorandum in support of this motion, Plaintiffs are entitled to preliminary injunctive relief because they are likely to succeed on the merits of their claims that the August 2018 Memorandum (1) is a legislative rule that is invalid for failure to observe the notice-and-comment procedures imposed by the Administrative Procedure Act, *see* 5 U.S.C. §§ 553, 706(2); and (2) is invalid because it conflicts substantively with the Immigration and Nationality Act, *see* 8 U.S.C. § 1182(a)(9)(B); 5 U.S.C. § 706(2).

Plaintiffs are also likely to suffer irreparable harm in the absence of an injunction, and the balance of equities and the public interest both favor preliminary injunctive relief. Because plaintiff Jia Ye may suffer irreparable harm on February 5, 2019—and plaintiff Sen Li will suffer irreparable harm shortly thereafter—we respectfully request that the Court enter relief on or before February 4, 2019. Plaintiff Jia Ye and Sen Li just now joined this lawsuit as new plaintiffs, as they were not party to the original complaint.

To that end, plaintiffs respectfully suggest that the parties present briefs with the following schedule:

- **January 7, 2019:** Government opposition to plaintiffs’ motion for preliminary injunction and summary judgment.<sup>1</sup>
- **January 15, 2019:** Plaintiffs’ response in support of their motion.

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<sup>1</sup> The government had previously requested that Plaintiffs consent to a responsive date in this case of January 7, 2019 in view of the holiday season. Plaintiffs agree to that date, but respectfully submit that the circumstances preclude any additional extension of time in this matter.

Plaintiffs further request, pursuant to Local Civil Rule 65.1(b) and Section G(2) of this Court's Policies and Procedures for Civil Cases, that they be permitted to present oral argument in support of this motion for preliminary injunction and summary judgment.

Respectfully submitted,

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*\* Notice of Special Appearance Forthcoming*

### **CERTIFICATE OF SERVICE**

I hereby certify that on December 14, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and have verified that such filing was sent electronically using the CM/ECF system to counsel for defendants.

Dated: December 14, 2018

/s/ Paul W. Hughes